It is very rare that application is made to this court for a new trial on the ground that a witness has told a lie. The principles to be applied are the same as those always applied when fresh evidence is sought to be introduced. In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled; first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

He also referred to *Skone* v *Skone & Anor.*[2]

Counsel for the appellant submitted that the letter could have been obtained with reasonable diligence for use at the hearing; even if this was not possible, the respondents could have indicated to the judge at the hearing of the originating summons in the court below that such a reply from the Director-General of Public Works was important but had not been received, and the hearing could have been adjourned.

We allowed the application. The exact arguments of counsel for the respondents on this letter which may be raised in the appeal proper need not concern us here, and our comments herein are without prejudice to the appeal proper. The letter which the respondents wish to adduce is dated 3 January 1991. It was not in existence at the hearing of the originating summons on 12 November 1990. One of the issues in the appeal proper is whether the approval of the building authority is required for the renovation works. The letter states that plans have been submitted for consideration of approval. In the present case, the conditions of *Ladd* v *Marshall*[1] are satisfied, because in our opinion the evidence of the letter could not have been obtained with reasonable diligence. It would have an important influence on the result of the case and is apparently credible. The application was allowed with costs in the cause.

Application allowed.

Solicitors: *Bernard Rada & Lee; Johns & Co.*

Reported by *Zarinah Marican*

Er Boon Huai & Anor v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 6 OF 1991
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
5 AUGUST 1991

Criminal Procedure — Sentence — Additional term of imprisonment imposed in lieu of caning — Term of imprisonment more than that of co-accused — Whether justified — Criminal Procedure Code (Cap 68, 1985 Ed), s 231

The two appellants had pleaded guilty to a charge of trafficking in diamorphine, an offence under s 5(a) of the Misuse of Drugs Act (Cap 185, 1985 Ed). The first appellant was sentenced to 24 years of imprisonment and 15 strokes of the cane. The second appellant, who was more than 50 years old on the date of the conviction, could not be punished with caning. He was given an additional three years of imprisonment in lieu of the caning and was therefore sentenced to 27 years of imprisonment. Both appellants appealed against sentence.

Held, dismissing the first appellant's appeal and allowing the second appellant's appeal:

(1) Bearing in mind the quantity of drugs involved and the minimum and maximum sentences prescribed by law, the sentence of 24 years' imprisonment and 15 strokes of the cane imposed on the first appellant could not be said to be manifestly excessive.

(2) Section 231 of the CPC places the three categories of persons stated therein in a special position in that any provision in any law imposing a liability to caning would not be applicable to such persons. Therefore, unlike the first appellant, the maximum penalty that the second appellant was liable for was 30 years' imprisonment (without any caning) and the minimum penalty was 20 years' imprisonment (without any caning). The additional three years' imprisonment imposed on the second appellant in lieu of the caning cannot be justified, as the second appellant, in the absence of any facts to distinguish his case from that of the first appellant's, must be sentenced to the same term of imprisonment as the first appellant for this offence. A term of imprisonment of 24 years from the date of his arrest was therefore ordered.

Legislation referred to
Criminal Procedure Code (Cap 68, 1985 Ed) s 231
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5(a), 33

Appellants in person.
Jasvender Kaur for the Public Prosecutor.

Cur Adv Vult

Rajendran J (delivering the judgment of the court): The two appellants had on 25 March 1991 pleaded guilty to the following charge:

> You, Er Boon Huai and Lai Ah Kau, are charged that between 11.45am and 11.55am on 27 April 1988, in furtherance of the common intention of you both, did traffic in a controlled drug specified in 'Class A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 1985 Ed) by transporting 3 packets containing a total of not less than 10g and not more than 15g of diamorphine in motor car PBE 9696 from the carpark at Block 75, Pipit Road, to the

carpark serving Blocks 54 and 76, Pipit Road, via Circuit Road, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under s 5(a) of the Misuse of Drugs Act read with s 34 of the Penal Code (Cap 224, 1985 Ed) and punishable under s 33 of the Misuse of Drugs Act.

They admitted the facts outlined by the prosecution and were convicted. The first appellant, Er Boon Huai, who was 33 years of age, was sentenced to 24 years' imprisonment and 15 strokes of the cane. The second appellant, Lai Ah Kau, who on the date of the conviction was 50 years and 9 months old, was sentenced to 27 years' imprisonment. They now appeal against the sentences imposed.

The facts that gave rise to the offence were that on 25 April 1988, the second appellant telephoned the first appellant and told him that he had a buyer for three pounds of heroin at $6,400 per pound. The first appellant made the necessary arrangements with his supplier and told the second appellant that he would deliver the three pounds to the second appellant on 27 April 1988.

At about 11am on 27 April 1988, the first appellant collected the three pounds of heroin from near Beauty World in Bukit Timah area and drove to Pipit Road. He parked his car near Block 75, Pipit Road, and went up to the flat at Block 75, #09-227, where the second appellant was waiting. The buyer arrived at the flat shortly thereafter and left after speaking with the second appellant. The second appellant told the first appellant that the buyer had told him that he would collect the diamorphine later and had asked the second appellant to keep the diamorphine until collection.

The two appellants then went to where the first appellant's car was parked. Rather than take the drugs from where the car was parked, the two drove off, went into Circuit Road, then returned to Pipit Road and stopped at the car park serving Blocks 54 and 76. The second appellant then took a brown plastic bag containing three bundles of the drug and went to the flat at Block 75, #09-227.

The first appellant drove off but was intercepted and arrested by officers of the Central Narcotics Bureau. Other officers raided the flat at Block 75, #09-227, arrested the second appellant, searched the flat and seized the brown plastic bag containing the three bundles that the second appellant had earlier been carrying. The contents of the three bundles on analysis by the Department of Scientific Services were confirmed to be diamorphine with a total weight of just under 255g.

The first appellant, in support of his appeal, told the court that he was remorseful and would never commit the offence again. He urged the court to show leniency.

The second appellant told the court that he committed the offence because he was himself a drug addict and needed money. He told the court that he was a sick man and was undergoing treatment for hypertension and heart problems. In view of his age and medical condition he urged the court to reduce the term of imprisonment imposed on him.

The punishment prescribed by law for this offence was a maximum of 30 years' imprisonment and 15 strokes of the cane and a minimum of 20 years' imprisonment and 15 strokes of the cane. Bearing in mind the quantity of drugs involved and the minimum and maximum sentences prescribed by law, the sentence of 24 years' imprisonment and 15 strokes of the cane imposed on the first appellant could not be said to be manifestly excessive. We therefore dismissed the appeal by the first appellant.

The second appellant was over 50 years of age when he was convicted for this offence. In view of his age, he could not, by virtue of s 231 of the Criminal Procedure Code (Cap 68, 1985 Ed), be punished with caning. The learned trial judge in sentencing the second appellant took the provisions of s 231 into account and imposed an additional three years' of imprisonment on the second appellant in lieu of the caning. This is evident from his grounds of judgment where the learned trial judge states:

> Lai, having passed the age of 50 when he appeared before me, was not liable to caning and in view of this, I felt an additional three years of imprisonment was justified and I accordingly sentenced him to 27 years' imprisonment.

Section 231 reads as follows:

> No sentence of caning shall be executed by instalments and none of the following persons shall be punishable with caning:
>
> (a) women;
> (b) males sentenced to death;
> (c) males whom the court considers to be more than 50 years of age.

Section 231 places the three categories of persons stated therein in a special position in that any provision in any law imposing a liability to caning would not be applicable to such persons. That being so, unlike the first appellant, the maximum penalty that the second appellant was liable for was therefore 30 years' imprisonment (without any caning) and the minimum penalty was 20 years' imprisonment (without any caning). The additional three years imprisonment imposed on the second appellant in lieu of the caning cannot be justified as the second appellant, in the absence of any facts to distinguish his case from that of the first appellant's, must be sentenced to the same term of imprisonment as the first appellant for this offence.

We allowed the appeal against sentence by the second appellant and set aside the sentence imposed. In the circumstances of this case, we considered that a term of imprisonment of 24 years from the date of his arrest would be the appropriate sentence to impose on the second appellant and we so ordered.

Order accordingly.

Reported by *Zarinah Marican*

Chong Joon Wah v Tan Lye Thiang

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 16 OF 1988
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
30 JULY 1991

Civil Procedure — Appeal — Appellate court ordering a new trial — Fresh evidence — Principle on which received

The appellant and respondent were involved in a traffic accident which also involved six other vehicles. The appellant issued a writ against the respondent in a district court summons and at the conclusion of the trial, judgment was given for the appellant for $3,629 and costs. The driver of the sixth car, one Ng Yong Teck ('Ng'), could not be traced and was not called as a witness, but by agreement his police report was tendered in evidence and was considered by the district judge in his grounds of decision. The respondent filed an appeal to the High Court and before the appeal was heard, he managed to trace Ng. He then obtained an order from the High Court for leave to adduce further evidence by Ng at the hearing of the appeal.

Ng gave evidence at the appeal. The learned judge concluded that his evidence was consistent with his police report and that, if he was to be believed, his evidence showed that the appellant's claim must fail. He ordered a re-trial by another district judge who would then be in the position to assess the credibility of Ng and the other witnesses. The appellant appealed to the Court of Appeal against this decision.

Held, allowing the appeal and affirming the district court's order:

(1) The learned High Court judge was only able to hear one witness, Ng, while the district judge heard many witnesses of fact, both as to liability and quantum and, in doing so, also considered Ng's police report. He had given full consideration to the conflicting allegations and assessed all the evidence, and made clear findings. Ng's evidence at a new trial, if it was merely consistent with his evidence in his earlier police report, which had already been considered by the district judge, could not by itself have any important influence on the result of a fresh hearing before another district judge.

(2) There was no explanation by the respondent as to why Ng's evidence could not have been obtained with reasonable diligence for use at the trial.

(3) There must be finality in litigation. The costs of litigation require that some semblance of proportion must be maintained and the Court of Appeal would be reluctant to order a new trial when the amount at stake is so small and the proceedings in court have already taken so long.

Case referred to
1 *Ladd* v *Marshall* [1954] 3 All ER 745 (folld)

Appeal from: District Court Appeal No 52 of 1985 (High Court, Singapore), DC Summons No 6530 of 1983 (District Court, Singapore)

Wong Juan Swee for the appellant.
Ng Kian Fong for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): On 28 February 1983, an accident took place at about 7.30am along Jalan Toa Payoh in the direction of Stevens Road. This accident involved eight motor vehicles. The line-up of the motor vehicles from the front to the back was as follows:

First — QEL 6948D;
Second — EM 3613J;
Third — EG 9253G;
Fourth — EP488H, a 1300-cc Subaru, driven by the appellant;
Fifth — SZ 3779E, a 1200-cc Datsun 120Y;
Sixth — QES 5837K, an 800-cc Suzuki, driven by Ng Yong Teck;
Seventh — SZ 5721H, a Datsun Bluebird;
Eighth — EC 2791L, an 1800-cc Fiat, driven by the respondent.

The appellant was driving the fourth car and the respondent the eighth car. On 12 September 1983, a writ was issued by the appellant against the respondent in a district court summons. At the conclusion of the trial in district court on 7 October 1985, judgment was given in favour of the appellant for $3,629 and costs. Ng Yong Teck, the driver of the sixth car, could not be traced and was not called as a witness, but by agreement his police report was tendered in evidence and was considered by the district judge in his grounds of decision.

On 19 October 1985, the respondent filed an appeal to the High Court against this judgment. Before the appeal was heard, he managed to trace Ng, following which he obtained an order from the High Court giving him leave to adduce further evidence by Ng at the hearing of the appeal.

The appeal was heard in the High Court by Coomaraswamy J on 15 February 1988, in the course of which Ng gave evidence. After hearing Ng's evidence, the learned judge was of the view that this evidence was consistent with his police report and that, if he was to be believed, his evidence showed that the appellant's claim against the respondent must fail. As the decision of the district judge had been based substantially on the evaluation of the credibility of the witnesses, Coomaraswamy J was of the view that it would be fairer to the parties if the whole case should be re-tried by another district